RECENT DECISIONS.

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ADMIRALTY—DEATH BY WRONGFUL ACT—ENFORCEMENT OF STATE STATUTES.—A Massachusetts schooner was run down and sunk by a British steamer on the high seas. The libellant, personal representative of one who met his death in the accident, brought suit for damages under the state statute allowing recovery for death by wrongfut act. *Held,* the state statute was inapplicable to afford relief. *The Sagamore* (1 C. C. A. 1917) 247 Fed. 743.

Although there is no remedy in general maritime law for death by wrongful act, *The Harrisburg* (1886) 119 U. S. 199; 7 Sup. Ct. 140, admiralty courts have allowed a recovery by enforcing state statutes giving a right of action in such cases, *The Anglo-Patagonian* (C. C. A. 1916) 235 Fed. 92, even against foreign vessels while in state waters. *The Horsa* (D. C. 1915) 232 Fed. 993. However, since these state statutes can have no general extra-territorial effect, difficulties arise when the wrong occurs on the high seas. The courts have partially overcome these difficulties by employing the fiction that a vessel while on the high seas is a part of the territory of the state where it is owned and is therefore subject to the laws of the particular state. *The Hamilton* (1907) 207 U. S. 398, 28 Sup. Ct. 133; see *Internat'l Nav. Co.* v. *Lindstrom* (C. C. A. 1903) 123 Fed. 475. A logical application of this fiction would seem to necessitate a result contrary to that reached in the instant case, since the wrong was consummated on the Massachusetts vessel. Nevertheless, although the question has never been squarely presented, courts have stated that where the offending vessel is foreign a state statute is inapplicable to afford relief for death by wrongful act on the high seas. See *The Alaska* (1889) 130 U. S. 201, 9 Sup. Ct. 461; *Lindstrom* v. *Internat'l Nav. Co.* (C. C. 1902) 117 Fed. 170. The fiction of extended jurisdiction, then, at the present time is effective only to afford relief under a particular state statute when the offending vessel is owned in that state. This condition can only be remedied by the enactment of a federal statute giving a right of action in cases like the instant one. See 22 Case and Comment 125. However, in view of the present policy to apply the law of the jurisdiction where the foreign vessel is registered, *La Bourgogne* (1908) 210 U. S. 95, 28 Sup. Ct. 664; see 21 Harvard Law Rev. 1; 75, a recovery should have been allowed in the instant case by the application of the British law. See *Davidsson* v. *Hill* [1901] 2 K. B. 606.

ASSAULT AND BATTERY—ACCIDENT AND MISTAKE—VIOLATION OF SUNDAY LAW.—The plaintiff and the defendant went out to shoot gray squirrels in violation of a Sunday law. The defendant shot at the gray cap of the plaintiff, mistaking it for a squirrel, thereby injuring the plaintiff. *Held,* the plaintiff was entitled to recover in trespass. *White* v. *Levarn* (Vt. 1918) 102 Atl. 1035.

The distinction between "accident" and "mistake" is fairly well recognized in the law of torts. Whittier, "Mistake in the Law of Torts", 15 Harvard Law Rev. 335. The former term is applied to an

act the consequences of which were not intended by the defendant and could not reasonably have been foreseen and avoided, whereas the latter is used to denote an act the consequences of which were intended, but with an erroneous belief that some external circumstances existed which justified it. Salmond, Torts (4th ed.) § 3. It is generally held that one is not liable for accidents, *Morris* v. *Platt* (1864) 32 Conn. 75; *Stanley* v. *Powell* [1891] 1 Q. B. 86, but is responsible for his mistakes. *Bazely* v. *Clarkson* (1681) 3 Lev. *37; *Dexter* v. *Cole* (1858) 6 Wis. *319; *contra, Paxton* v. *Boyer* (1873) 67 Ill. 132. The act complained of in the principal case is apparently more of a mistake than an accident, so that the defendant would seem to be liable irrespective of any Sunday law; but if it be considered an accident, his liability is doubtful. A plaintiff may recover for a breach of statutory duty causing injury to him where the statute has been passed for his protection. *Willy* v. *Mulledy* (1879) 78 N. Y. 310, but not where the statute was enacted to prevent some other mischief, *Gorris* v. *Scott* (1874) 9 Exch. 125, unless the violation directly causes the injury. *Inhabitants of Hyde Park* v. *Gay* (1876) 120 Mass. 589. Where an act is committed which is a violation of a right of the plaintiff given him by law the defendant is liable for more remote consequences of that act, *Wyant* v. *Crouse* (1901) 127 Mich. 158, 86 N. W. 527, but where the injury to the plaintiff is in violation of a statute which gives the plaintiff no personal rights, it would seem that the normal rules of proximate cause should be applied, and that the violation of the statute should be considered only as a circumstance. See *Gross* v. *Miller* (1894) 93 Iowa, 72, 61 N. W. 385; *Hughes* v. *Atlanta Steel Co.* (1911) 136 Ga. 511, 71 S. E. 728. By parity of reasoning, the mere fact that the plaintiff was also engaged in a violation of the law should not prevent his recovery in absence of proof that his violation directly contributed to his own injury. *Gross* v. *Miller, supra*; *Hughes* v. *Atlanta Steel Co. supra*; *contra, McGrath* v. *Merwin* (1873) 112 Mass. 467, changed by Mass. Gen. Laws (1884) c. 37. To hold otherwise would be to impose an additional penalty for a violation of the statute not contemplated by the legislature, and would in effect make one who violated a Sunday law forfeit all right to protection from the wantonness of others. See *Gross* v. *Miller, supra.*

BANKRUPTCY—HUSBAND AND WIFE—ESTATES BY THE ENTIRETY—DISCHARGE OF LIEN.—The defendant secured a judgment against husband and wife jointly which became a lien on an estate held by them in the entirety. Within four months a petition in bankruptcy was filed against the husband. The trustee made no claim to the estate by the entirety, but the defendant submitted his claim and received his share as a general creditor. The defendant now wishes to exercise his lien on the estate. In a suit to enjoin the sale, *held,* that under § 67f of the Federal Bankruptcy Act (30 Stat. 565, U. S. Comp. Stat. 1916, § 9651) the filing of the petition within four months and the subsequent adjudication of bankruptcy vacated the judgment lien as to the husband and therefore the estate could not be sold to satisfy it. *Ades* v. *Kaplan* (Md. 1918) 103 Atl. 94.

The discharge of the husband does not affect the liability of the wife where she is the co-debtor of her bankrupt husband, *Love* v. *McGill* (1906) 41 Tex. Civ. App. 471, 91 S. W. 246; *Security Savings Bank* v. *Scott* (1906) 3 Cal. App. 687, but a creditor of one spouse